

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 97-0621 ST
SALES AND USE TAX
For Tax Periods: 1994-1996**

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Issue

Sales and Use Tax: Installation Charges

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-4-1(e), IC 6-2.5-1-2, IC 26-1-2-401(2), IC 6-2.5-1-1, *Cowden & Sons Trucking, Inc. v. Indiana Department of State Revenue*, 575 N.E.2d 718 at 722 (Ind. Tax 1991).

The taxpayer protests the imposition of sales tax on installation charges.

Statement of Facts

The taxpayer is an Indiana corporation that designs, sells, installs, and maintains satellite systems. They also provide programming. The taxpayer's primary customers are industrial accounts that include apartment complexes and hospitals. After an audit, the Indiana Department of Revenue, hereinafter, referred to as the "department," assessed additional sales and use tax for the tax period 1994-1996. The taxpayer protested a portion of the assessment and a hearing was held on the imposition of the sales tax on installation charges.

Sales and Use Tax: Installation Charges

Discussion

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. A retail transaction is defined generally as the acquiring and subsequently selling of tangible personal property. IC 6-2.5-4-1. Except for certain enumerated services, sales of services are generally not retail transactions and are not subject to sales tax. There are two instances when an otherwise nontaxable sale of a service is subject to sales tax. The first is when the services are performed with respect to tangible personal property being transferred in a retail transaction and the services take place prior to the transfer of the tangible personal property. IC 6-2.5-4-1(e). The second is when the services are part of a retail unitary transaction. IC 6-2.5-1-2. A unitary transaction is

defined as a transaction that includes the transfer of tangible personal property and the provision of services for a single charge pursuant to a single agreement or order. IC 6-2.5-1-1.

Pursuant to the commercial law of Indiana, absent an explicit agreement to the contrary, transfer is presumed to take place upon physical delivery of the property. IC 26-1-2-401(2). The installation in this case takes place after the tangible personal property, the satellite system, has been delivered to the location designated by the purchaser. In the absence of an explicit agreement between the taxpayer and its customers to the contrary, the transfer takes place prior to installation. Since the installation services are performed after the transfer of the satellite systems, the installation charges are not subject to imposition of the sales tax.

The department assessed the sales tax on the taxpayer's installation charges on the theory that the transactions were unitary transactions pursuant to IC 6-2.5-1-1. If the transactions were actually unitary transactions, the entire charge would be subject to tax. However, in *Cowden & Sons Trucking, Inc. v. Indiana Department of State Revenue*, 575 N.E.2d 718 at 722 (Ind. Tax 1991), the court stated that "the legislature intends to tax services rendered in retail unitary transactions only if the transfer of property and the rendition of services is inextricable and indivisible." In *Cowden*, the court looked at the taxpayer's records, the overall nature of the taxpayer's business, and the nature of the unitary transactions themselves to determine whether the unitary transactions were inextricable and indivisible. *Id* at 723.

In this case, the taxpayer provided copies of invoices indicating that the service charges were consistently stated separately. Therefore, they are extricable and divisible from the charges for the sale of the tangible personal property. Pursuant to the finding in *Cowden*, the installation charges are not subject to the imposition of sales tax.

Finding

The taxpayer's protest is sustained.

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